

### **REMARKS/ARGUMENTS**

Claims 1-14 and 16-20 stand rejected in the outstanding Official Action. Claims 1-14 and 16 have been cancelled without prejudice, claims 17-20 amended and newly written claims 22-27 offered for consideration. Therefore, claims 17-20 and 22-27 are the only claims remaining in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority is very much appreciated. Additionally, the PTO acceptance of the formal drawings filed February 3, 2005 is appreciated. Finally, the Examiner's consideration of the prior art submitted with Applicants' Information Disclosure Statements is appreciated.

The Patent Office objects to the Abstract, the arrangement of the specification and the drawings. It is also appreciated that the Examiner has brought the Abstract, the arrangement of the specification and the drawings to the applicant's attention. It is noted that the objection to the Abstract, the arrangement and the drawings appear to be an indication that the originally filed specification and drawings (transmitted from WIPO) do not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

“if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.” Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office (including the Chief Draftsman's Office) may not require Abstract changes, specification format changes and/or drawing corrections (including changes in paper size, margins, etc.) as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this specification and these drawings were forwarded for WIPO, by definition, they meet the PCT requirements (they are not forwarded until they meet PCT requirements.). Therefore, the objection to the Abstract, the specification and the drawings is respectfully traversed and reconsideration thereof is respectfully requested.

The Examiner objects to the Abstract and alleges that the phrases "comprises" and "further comprising" are "legal phraseology." Applicants note that these words are defined in *Webster's* dictionary and are used in the ordinary course of the English language to mean "includes" or "including." While Applicants traverse the Examiner's conclusion that these terms are prohibited legal phraseology, Applicants have amended the Abstract to read "includes." The reference to "Figure 3" has been deleted. Accordingly, the amended Abstract clearly meets all U.S. PTO requirements.

Notwithstanding the above, headings and sub-heading have been added to the specification.

The drawings stand objected to under Rule 83 as allegedly failing to show all features set out in the claims. Applicants have cancelled without prejudice claims 1-14 directed to the structures which the Examiner contends are not shown in the drawings. As a result, there is no

obligation under Rule 83 for Applicants to show features of the remaining method claims.

Accordingly, any further objection to the drawings is respectfully traversed.

Claims 12-14 are objected to under Rule 75 as allegedly being in improper dependent form. Applicants respectfully traverse the Examiner's conclusion, but has cancelled these claims in favor of the newly submitted claims, thereby obviating any further rejection thereunder.

Claims 12 and 13 stand rejected as allegedly comprising non-statutory subject matter. Again, claims 12 and 13 have been cancelled without prejudice, thereby obviating the rejection under 35 USC §101. However, the subject matter of claims 12 and 13 has been revised and is believed properly claimed in newly submitted claim 27. Accordingly, any future rejection of claim 27 under 35 USC §101 is respectfully traversed.

Although Applicants' former independent method claim 16 has been cancelled without prejudice, the subject matter thereof has been included in Applicants submit newly written independent method claim 22, now submitted for consideration. Claims 17-20 have been amended to be dependent from claim 22 and Applicants add newly written claims 23-27 also dependent on claim 22. Accordingly, Applicants will address the Anderson reference with respect to a potential rejection under 35 USC §102.

The Anderson patent publication (U.S. Publication 2003/0184285) discloses a magnetic tracking system that is used for image guided surgery. The Anderson system requires transmitter and receiver coils. However, Anderson has nothing to do with any method for determining a drilling location on a wing skin. There is certainly no disclosure of Applicants' claimed method steps (a) through (j) in newly written claim 22. Should the Examiner contend Anderson contains a disclosure of any of these steps, she is respectfully requested to identify by column and line

number where Anderson contains any such disclosure. As a result of the above, any future rejection of claims 17-20 and 22-27 over the Anderson reference is respectfully traversed.

Claims 4 and 19 stand rejected under 35 USC §103 as unpatentable over Anderson in view of Gilbert (U.S. Patent 6,292,758). While Gilbert teaches "a Kalman filter tracking method," there is no disclosure that Gilbert, even if combined with Anderson, of the method steps of Applicants' independent claim 22 or claims dependent thereon. Moreover, the Examiner's conclusory statement that it would be "obvious" to combine Anderson and Gilbert notwithstanding, there is simply no reason or motivation for one of ordinary skill in the art to pick and choose elements from the Anderson and Gilbert references and then combine them in the manner of Applicants' remaining claim 19. Therefore, any further rejection of claim 19 over the Anderson/Gilbert combination is respectfully traversed.

Claim 9 stands rejected under 35 USC §103 as unpatentable over Anderson in view of Hiligsmann (U.S. Publication 2002/0008513). Inasmuch as claim 9 has been cancelled without prejudice, the cancellation obviates the rejection.

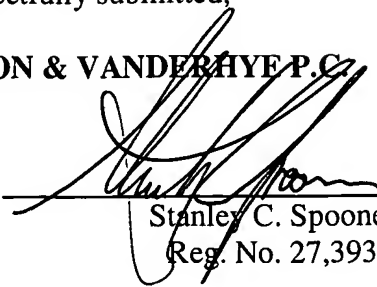
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that remaining claims 17-20 and 22-27 are in condition for allowance and notice to that effect is respectfully requested. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of the above claims, she is respectfully requested to contact Applicants' undersigned representative.

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Respectfully submitted,

**NIXON & VANDERHIE P.C.**

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